

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

BARRY FOREMAN,)
)
Plaintiff,)
)
)
v.)
)
)
GARFIELD COUNTY DISTRICT)
ATTORNEY'S OFFICE, et al.,)
)
Defendants.)

ORDER

Plaintiff filed this action pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Suzanne Mitchell for preliminary review. On October 19, 2015, Judge Mitchell issued a Report and Recommendation wherein she recommended that the Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* be denied, because Plaintiff failed to include a copy of his institutional account statement for the six-month period immediately preceding the filing of his application. Doc. No. 9, p. 2. Prior to entering the Report and Recommendation, Judge Mitchell had ordered Plaintiff to cure the deficiency by September 23, 2015, which he failed to do. Plaintiff then sought to rely on an account statement he had filed in this Court with regard to a separate case on July 27, 2015, stating in a September 9, 2015 filing that his "financial status has not changed since entry of" that statement. Doc. No. 7. As a result of Petitioner's failure to comply with her prior orders and 28 U.S.C. § 1915(a)(2), Judge Mitchell recommended that Plaintiff's *in forma pauperis* request be denied.

and that the action be dismissed without prejudice if Plaintiff does not tender the \$400.00 filing fee within twenty days of any order adopting her recommendation. The Court thereafter deferred consideration of the Report and Recommendation and granted Plaintiff an opportunity to provide either the requested documentation or evidentiary support for why he cannot provide a certified statement of his institutional account for the sixth month period immediately preceding the October 9, 2015 filing of this action.

On November 27, 2015, Plaintiff filed a Motion for Leave to Proceed *In Forma Pauperis*, and included therewith a letter explaining that his institutional account statement is limited to the period before June 25, 2015, because that was the date of his last transaction, and the statements are updated only when a transaction takes place. As such, the zero balance reflected from that date continues to this date, as evidenced by the statement of the Jail Administrator for Garfield County Detention Center, which reflects a zero balance.¹ Accordingly, the Court concludes Plaintiff is entitled to proceed with this action without prepayment of fees. Plaintiff, however, shall be required to pay the full \$350 filing fee, pursuant to 28 U.S.C. § 1915(b)(1), as set forth below.

IT IS THEREFORE ORDERED that Plaintiff shall make monthly payments of 20 percent of the preceding month's income credited to his prison account until he has paid the total filing fee of \$350. 28 U.S.C. § 1915(b)(2). Plaintiff is advised that if he does not desire the collection of the full fee in this manner he may voluntarily dismiss this action in

¹ Plaintiff's letter also includes an apology to Judge Mitchell.

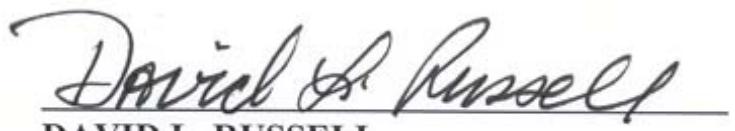
accordance with Fed.R.Civ.P. 41(a) on or before the 1st of February, 2016, without incurring any fees or costs. Unless Plaintiff advises otherwise, the Court will enter an order directing the agency having custody of Plaintiff to collect and forward such monthly payments to the Clerk of the Court until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). Interference by Plaintiff in the submission of these funds may result in the dismissal of this action.

Plaintiff is advised that notwithstanding the payment of the filing fee, or any portion thereof, the Court is required to dismiss at any time all or part of such complaint which (1) is frivolous or malicious; (2) fails to state a claim on which relief can be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2); 1915A; 42 U.S.C. § 1997e(c)(1). Plaintiff is further advised that such monthly payments will continue to be collected until full payment of the filing fee has been received by the Court even after disposition of the case and regardless of whether relief is granted or denied.

IT IS FURTHER ORDERED that the Clerk of Court shall not issue process until further order of the Court.

In light of the foregoing, the Court hereby declines to adopt the Report and Recommendation (Doc. No. 9) and grants Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (Doc. Nos. 13). Plaintiff's initial Motion for Leave to Proceed *In Forma Pauperis* (Doc. No. 2) is hereby denied as moot. This matter is re-referred to Judge Mitchell for further proceedings in accordance with the original referral dated September 2, 2015.

IT IS SO ORDERED this 12th day of January, 2016.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE